



REMARKS

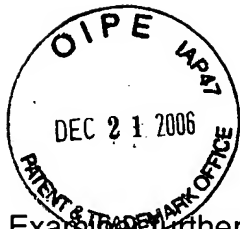
I. Status of the Claims

Claims 1-64 are pending in this application. No claims are amended by this response.

II. Rejection under 35 U.S.C. §103(a)

The Examiner maintains the rejection of claims 1-64 under 35 U.S.C. § 103(a) as being unpatentable over Legrand et al. (U.S. Patent No. 6,379,401) ("*Legrand*") in view of Lorant et al. (U.S. 2003/0036490 A1) ("*Lorant*") "for the reasons set forth in the previous office action mailed on February 2, 2006." Final Office Action at 2.

The Examiner alleges that *Legrand*, as a primary reference, teaches an anhydrous hair bleaching composition "comprising at least one alkalizing agent, at least one peroxygenated salt, hydrogen peroxide as an oxidizing agent, surfactants and organic liquid such as mineral oils and plant oils." *Id.* at 3. To cure deficiencies in the primary reference, the Examiner relies on *Lorant* as a secondary reference, "in an analogous art of hair treating formulation" claiming that it "teaches a composition comprising amphiphilic copolymers of the claimed invention, hydrocarbon based plant origin oils and fatty acid esters and mineral oils such as polydecenes wherein the fatty phase (or oily phase) may range from 5 to 80%." *Id.* Therefore, the Examiner finds "a clear suggestion and sufficient motivation" for one of ordinary skill in the art "to be motivated to incorporate the amphiphilic copolymers as taught by Lorant et al. in the composition of Legrand et al. to arrive at the claimed invention with a reasonable expectation of success for stabilizing the bleaching composition." *Id.*



The Examiner further contends that “the applicant has not shown on record the criticality of the claimed ingredients over the composition of the closest prior art of record.” *Id.* at 4.

Applicants continue to traverse the rejection for reasons of record. Moreover, the enclosed Declaration of Damarys Braida, discussed below, further supports Applicant’s position that the claimed invention would not have been obvious to one skilled in the art.

A. No Motivation or Suggestion to Combine *Legrand* and *Lorant*

In order to establish a *prima facie* case of obviousness, an Examiner must first demonstrate that there would have been some suggestion or motivation, either in a cited reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. See M.P.E.P. § 2143. The Examiner has not made such a showing here.

The motivation to modify the prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. M.P.E.P. § 2143.01; *see, e.g., In re Napier*, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995). Here, the amphiphilic polymer in *Legrand* achieves superior results when used in the inventive compositions in *Legrand*. Although the Examiner argues that “a reference may be relied upon for all that it would have reasonably suggested”, there is no “reasonable suggestion” in the cited references to replace the successful and valuable polymer in *Legrand* with the polymer of *Lorant*. Likewise, there is no motivation or suggestion to replace a polymer that is known to work specifically in **anhydrous** bleaching compositions, with a copolymer that is used in various topical

compositions in *Lorant*, where bleaching is never even remotely suggested and where the disclosed compositions are aqueous or have an aqueous phase.

Only improper hindsight, i.e., using the present claims as a blueprint, could lead to such a modification. This contravenes the statutory mandate of §103 which requires judging obviousness at the time the invention was made. *See Grain Processing Corp. v. American Maize-Prods. Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988).

Accordingly, for at least the foregoing reasons, the Examiner has failed to make a prima facie case of obviousness.

B. Evidence of Superior Results

To further support their position, with respect to obviousness, Applicants submit herewith the Declaration under 37 C.F.R. § 1.132 of Damarys Braida. The Declaration presents the results of comparative tests between an inventive composition (A+B) comprising an anionic associative polymer Aristoflex HMS (crosslinked AMPS/ethoxylated (25 OE) stearyl methacrylate copolymer) as the inventive copolymer and a comparative composition (A+C) comprising a non-inventive anionic polymer, PEMULEN TR1, which falls within the scope of the anionic amphiphilic polymers disclosed in *Legrand*. *See, e.g.*, col. 5, line 53. Hair was bleached with each of the two compositions as described in the attached Declaration, and the color variation ΔE between a non-bleached lock of hair and each bleached lock of hair was then measured. The inventive composition gave a greater color variation ($\Delta E = 33.4$) compared to the comparative composition ($\Delta E = 29.9$), showing that the inventive composition comprising at least one copolymer comprising (a) at least one hydrophobic unit and (b) at least one unit derived from at one ethylenically unsaturated monomer

comprising at least one sulphonic group, in free or partially or totally neutralized form, as presently claimed, resulted in hair which was more intensely bleached. The lightness of the hair, L^* , was also measured, and again, the inventive composition had superior results, with a L^* value of 43.23 compared to the comparative value of 40.19.

These experimental results reveal that the bleaching of the hair obtained with the composition according to the invention (Composition A+B) is surprisingly more intense and luminous than the bleaching of the hair obtained with the comparative composition (Composition A+C). Because these results would not have been predictable based on the art cited herein, the superior color variation (intensity of bleaching) and lightness of the hair color of the inventive compositions demonstrate the nonobviousness of the presently claimed invention. For at least the foregoing reasons, Applicants submit that the rejection under 35 U.S.C. §103(a) is improper and request its withdrawal.

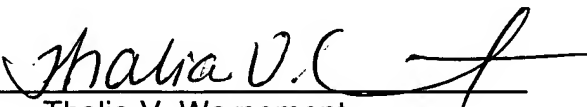
III. Conclusion

In view of the foregoing remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 21, 2006

By: 
Thalia V. Warnement
Reg. No. 39,064



PATENT
Customer No. 22,852
Attorney Docket No. 05725.1297

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Frédéric LEGRAND et al.)	Group Art Unit: 1751
Application No.: 10/758,265)	Examiner: Eisa B. Elhilo
Filed: January 16, 2004)	Confirmation No. 5707
For: READY-TO-USE BLEACHING)	
COMPOSITIONS,)	
PREPARATION PROCESS AND)	
BLEACHING PROCESS)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION UNDER 37 C.F.R. § 1.132

I, Damarys BRAIDA, do hereby make the following declaration:

1. I am a French citizen, residing at

68 rue de Charenton 75012 PARIS - FRANCE

2. I have been awarded a degree in Mines de Paris

from FRANCE - PARIS

3. I have been employed by L'ORÉAL since

1991, and I presently hold the position of
laboratory supervisor. During my employment at L'ORÉAL, I have
of bleaches and developers

been engaged in research and development regarding cosmetic compositions for the body.

4. Given my education and experience, particularly in the area of cosmetics, I consider myself able to provide the following testimony based on experiments conducted by me or under my supervision.

TESTS

5. The following compositions were prepared.

I. Preparation of Compositions

The anhydrous bleaching composition A which follows was prepared:

Composition	A
Potassium persulphate	34.75 g
Ammonium chloride	4.2 g
Sodium metasilicate	3.4 g
Sodium disilicate	14.2 g
Sodium persulphate	6 g
N-oleylidihydrosphingosine	0.01 g
Beeswax	1.2 g
Liquid paraffin	1 g
Isopropyl myristate	21.6 g
Blue pigment	0.04 g
Titanium oxide	1 g
Hexamethyl diisocyanate / polyethylene glycol copolymer containing α and ω stearyl polyoxyethylene end groups (Rheolate FX 1100)	2 g
Weakly crosslinked carboxymethyl potato starch / sodium salt (Primojel)	2 g
Xanthan gum	1.4 g
Sodium lauryl sulphate	4 g
Magnesium stearate	2 g
Colloidal silica	1 g
Sequestering agent	0.2 g

The oxidizing compositions which follow were prepared:

Composition	B (inventive)	C (comparative)
Ceteareth-33	2 g	2 g
Cetearyl alcohol	8 g	8 g
Tetrasodium pyrophosphate, 10 H ₂ O	0.04 g	0.04 g
Sodium salicylate	0.035 g	0.035 g
Tetrasodium etidronate	0.2 g	0.2 g
Aqueous 50 % hydrogen peroxide solution	18 g	18 g
Crosslinked AMPS / ethoxylated (25 OE) stearyl methacrylate copolymer (Aristoflex HMS)	0.4 g A.M.	-
Acrylates / C ₁₀ - C ₃₀ alkylacrylate crosspolymer (Pemulen TR1)	-	0.4 g A.M.
Phosphoric acid	q.s.p. pH = 3.0	q.s.p. pH = 3.0
Water	q.s.p. 100 g	q.s.p. 100 g

Oxidizing composition B comprises ARISTOFLEX HMS, a copolymer according to the invention. Oxidizing composition C is similar to B, but instead of Aristoflex HMS, comprises a polymer not falling within the scope of the invention, PEMULEN TR1. All amounts are set forth in grams (g).

II. Testing Procedure

At the time of use, 1 part by weight of the anhydrous bleaching Composition A was mixed with 1.5 parts by weight of the oxidizing Inventive Composition B and 1 part by weight of the anhydrous bleaching Composition A was mixed with 1.5 parts by weight of each of the oxidizing Comparative Composition C.

Each resulting mixture was applied onto locks of chestnut hair (tone height equal to 4), at the rate of 10g of composition per 1g of hair. After 40 minutes at 27°C, the hair rinsed with water, washed with a standard shampoo, rinsed again and dried.

III. Color Determination

The color of the hair was determined by using the $L^*a^*b^*$ system, with a MINOLTA CM2002 spectrophotometer. According to this system, L^* indicates lightness of the color of the hair. The higher the value of L^* , the lighter the color of the hair. The chromaticity coordinates are expressed by the parameters a^* and b^* , a^* indicating the axis of red / green shades and b^* the axis of yellow / blue shades.

ΔE , which is the color variation between a non-bleached lock of hair and a bleached lock of hair, is obtained from the following formula:

$$\Delta E = \sqrt{(L^* - L_0^*)^2 + (a^* - a_0^*)^2 + (b^* - b_0^*)^2}$$

wherein L^* indicates the lightness and a^* and b^* are the chromaticity coordinates of the bleached lock of hair whereas L_0^* indicates the lightness and a_0^* and b_0^* are the chromaticity coordinates of the non-bleached lock of hair. The higher the value of ΔE , the more intense is the bleaching of the hair.

IV. Results

The results are expressed in the following tables.

	L^*
Composition A + Composition B (invention)	43.23
Composition A + Composition C (state of the art)	40.19

	ΔE
Composition A + Composition B (invention)	33.4
Composition A + Composition C (state of the art)	29.9

The results show that the color of the hair obtained with inventive composition B ($L^* = 43.23$) is lighter than the color of the hair obtained with the comparative composition C ($L^* = 40.19$). Furthermore, the bleaching of the hair obtained with inventive composition B is more intense ($\Delta E = 33.4$) than the bleaching of the hair obtained with comparative composition C ($\Delta E = 29.9$).

6. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 20 decembre
2006

By: DB Braida
Damarys BRAIDA